

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.223 of 2006

Decided on : November 14, 2006

Param Dev

.....Appellant.

VERSUS

Kansi Ram and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Praveen Sharma, Advocate.

For the Respondents : M/s Dharamvir Sharma and Vikrant Sankhyan, Advocates.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant Param Dev is aggrieved by the judgments of the two Courts below, whereby his suit for declaration that he is owner in possession of 1 biswa 5 biswansis land, bearing Khasra No.173, and for permanent prohibitory injunction restraining the respondents-defendants from causing any interference in his possession, has been dismissed.

3. Appellant-plaintiff filed a suit claiming that the abovesaid land had been in his possession for the last 30-35 years and he had acquired title by way of adverse possession. Further, he stated that defendants-respondents No.1 to 4, claiming that they had purchased the said land from Chamaru, filed a suit of adverse possession against Chamaru, who was recorded in possession in

Whether the reporters of the local papers may be allowed to see the Judgment?

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the revenue papers, and that in that suit they obtained a decree by playing fraud on the Court, in-as-much as they produced someone imposing as Chamaru, who filed a written statement admitting the claim of defendants-respondents No.1 to 4, and that decree was passed on the basis of the written statement of the said imposter. He claimed that in spite of passing of the aforesaid decree in favour of defendants-respondents No.1 to 4, he continued to be in possession. It was alleged that the defendants, after passing of the aforesaid decree and attestation of mutation on the basis of that decree, started interfering in his possession. Besides decree for declaration, he also sought permanent prohibitory injunction restraining the defendants from interfering in his possession.

4. The two Courts below have turned down the plea of the appellant-plaintiff that he is in possession of the suit land.

5. Grievance of the appellant-plaintiff is that the trial Court and the first Appellate Court have not appreciated the evidence correctly and that, as a matter of fact, it is made out from the statement of Chamaru Ram, proforma respondent, who was examined as PW-2, that he never appeared in the earlier suit nor did he file any written statement, admitting the claim of the respondents-defendants and that even one of the respondents-defendants, namely Kanshi Ram, who appeared as DW-1, stated that Chamaru Ram had not appeared in the earlier suit despite service of summons and that in the face of this overwhelming evidence the trial Court and the first Appellate Court ought to have

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returned the finding that the decree in the earlier suit had been obtained by the respondents-plaintiffs by playing fraud.

6. The case of the appellant-plaintiff is that he is owner in possession of the suit land by adverse possession. Whether the decree in the earlier suit was obtained by playing fraud or it was a genuine decree will be of no consequence when the plaintiff-appellant claims himself to be in adverse possession of the suit land for the last 30-35 years. Chamaru Ram, who appeared as PW-2, though denied that he appeared in the earlier suit and made an admission in favour of the respondents-defendants, yet he stated in no uncertain terms that he had sold the suit land to the respondents-defendants. It is true that he stated that the possession of the suit land had been with the plaintiff for the last 18-19 years, but his statement is contrary to the claim made by the plaintiff that he has been in possession for the last 30-35 years. He introduced a new story that earlier the suit land was sold by its previous owner Narainu in favour of someone and the plaintiff filed a suit for pre-emption and that that suit was decreed in favour of the plaintiff and after the decree he came in possession. This version of Chamaru is at variance with the plaintiff's own version.

7. Further, the suit land is recorded as *Gairmumkin Makaan* in the *Jamabandi* for the year 1994-95. The plaintiff claims that after the house caved in he started sowing wheat and maize crops on the site. Now, when in the *Jamabandi* for the year 1994-95 the land is recorded as *Gairmumkin Makaan* and presumption of truth attaches to the entries in the *Jamabandi*, the version of the

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plaintiff that he had been sowing wheat or maize crop on the land for the last 30-35 years, cannot be believed. In any case, the finding by the two Courts below on the question as to which of the two sides is in possession is a finding of fact. The two Courts have returned the finding on this question on the basis of the evidence adduced during the course of the trial. After having gone through the record, I do not think that the finding of the two Courts below on this point is perverse.

8. Under these circumstances, no question of law, muchless a substantial question of law, arises. Hence, the appeal is dismissed.

CMP No.353/2006

Infructuous.

November 14, 2006_(sd)

(Surjit Singh), J.